

1 The Honorable Barbara J. Rothstein  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AFSHAN KHOSRAVI, et al.,  
Plaintiffs,

v.  
MARCO RUBIO, et al.,  
Defendants

NO. 2:24-cv-1227

**ORDER (1) GRANTING  
DEFENDANTS' MOTION TO  
DISMISS AND (2) DENYING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

I. INTRODUCTION

This matter comes before the Court on (1) a Motion to Dismiss filed by Defendants Marco Rubio,<sup>1</sup> U.S. Secretary of State, and Robert Jachim, Acting Director of the Office of Screening, Analysis, and Coordination within the Bureau of Consular Affairs' Visa Service Office ("Defendants"); and (2) a Motion for Summary Judgment filed by Plaintiffs Afshan Khosravi, a U.S. citizen living in Washington, and her father, Hossein Khosravi, 80 years old, an Iranian national residing in Iran. Plaintiffs seek an order directing Defendants to adjudicate Mr. Khosravi's visa application. Defendants seek dismissal of Plaintiffs' claims. Having reviewed the

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<sup>1</sup> Marco Rubio, successor to the original Defendant, Antony Blinken, as U.S. Secretary of State, is automatically substituted per Fed. R. Civ. P. 25(d).

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1 briefs and exhibits filed in support of and in opposition to these motions and the relevant caselaw,  
 2 the Court finds and rules as follows.

3 **II. BACKGROUND**

4 In June 2021, Plaintiff Afshan Khosravi initiated the process of obtaining immigrant visas  
 5 for her Iranian national parents so that they might travel to, and ultimately remain in, the U.S. for  
 6 the remainder of their lives. Am. Compl., ¶ 64. On November 3, 2023, Plaintiff Hossein Khosravi  
 7 and his wife (Afshan's mother), submitted their visa applications and were interviewed at the U.S.  
 8 Embassy in Ankara, Turkey. *Id.* Following the interview, the consular officer issued a visa to  
 9 Mrs. Khosravi, who proceeded to enter the U.S. and was granted U.S. permanent resident status.  
 10 *Id.*, ¶ 65. However, Mr. Khosravi received a form advising him of the following:

11 A U.S. consular officer refused your visa application pursuant to section 221(g) of  
 12 the U.S. Immigration and Nationality Act<sup>[2]</sup> for the reason or reasons selected  
 13 below. This constitutes a final adjudication of your visa application. However, this  
 refusal may be overcome if missing documentation is provided and/or  
 administrative processing is concluded. *Id.*, Ex. D.

14 The “reason or reasons selected below” provided, “Administrative Processing: We will  
 15 contact you by e-mail when your processing is completed.” *Id.* Khosravi was instructed to submit  
 16 additional information within 20 days, “[b]efore we can continue processing your visa  
 17 application,” and advised that “[l]ate responses may cause additional delays in processing your  
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19 <sup>2</sup> That section, codified at 8 U.S.C. § 1202(g), provides in relevant part “Nonissuance of visas or other documents.  
 20 No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in  
 21 the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa . . . under section  
 22 1182\* of this title, or any other provision of law, (2) the application fails to comply with the provisions of this  
 chapter, or the regulations issued thereunder, or (3) the consular officer knows or has reason to believe that such  
 alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other  
 provision of law.” \*Section 1182 enumerates several grounds for ineligibility, including health-related grounds,  
 criminal grounds, and security grounds.

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1 case.” *Id.*

2 Mr. Khosravi submitted the requested information approximately ten days later, on or  
 3 about November 13, 2023. Am. Compl., ¶ 67; Ex. D. In response, the embassy sent him a  
 4 message stating “[w]e received your form(s). Case is currently in administrative processing. If we  
 5 need additional information, we will contact you again.” *Id.* Since receiving this message,  
 6 Plaintiffs have not had word of any change in the status of Mr. Khosravi’s visa application.  
 7 According to DoS’s Consular Electronic Application Center (“CEAC”) “Visa Status Check”  
 8 website, Khosravi’s current application status is “Refused.” See  
 9 <https://ceac.state.gov/CEACStatTracker/Status.aspx> (last visited 3/3/2025). Additional  
 10 information on that website provides, “[a] U.S. consular officer has adjudicated and refused your  
 11 visa application. . . . If you were informed by the consular officer that your case was refused for  
 12 administrative processing, your case will remain refused while undergoing such processing. You  
 13 will receive another adjudication once such processing is complete.” *Id.*

14 Plaintiffs filed the instant lawsuit on August 12, 2024, approximately nine months after  
 15 Khosravi’s final submission to the embassy. They allege that this delay has caused them “extreme  
 16 emotional and psychological harm due to the uncertainty of their family’s future.” Am. Compl., ¶  
 17 79. The Amended Complaint includes claims under the Administrative Procedures Act (“APA”),  
 18 5 U.S.C. §§ 706(1), 706(2)<sup>3</sup>, and 555(b); and the Mandamus Act, 28 U.S.C. § 1361. Am. Compl.,  
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20 <sup>3</sup> Defendants have moved for dismissal of Count I, Plaintiffs’ claim brought under § 706(2). See MTD at 12-13. That  
 21 provision of the APA grants a court authority to set aside as arbitrary and capricious only a “final agency action.”  
 22 Plaintiffs have not identified any “final agency action” (and in fact, as discussed below, have argued that the agency  
 23 has *failed* to take a final action), and Plaintiffs do not address Defendants’ argument for dismissal of Plaintiffs’  
 24 claim under 706(2). The Court takes this silence as a concession that it fails to state a claim, and accordingly,  
 25 summarily dismisses Count I.

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1 Counts I-III, ¶¶ 84-90; 91-109; 110-121. Plaintiffs seek an injunction or a writ of mandamus,  
2 directing Defendants to adjudicate Mr. Khosravi's visa application, arguing that they have a  
3 "mandatory duty" that they have not fulfilled, and that the 16-month (and counting) period since  
4 the "refusal" constitutes an "unreasonable delay" prohibited under the APA.

### 5 III. DISCUSSION

#### 6 A. Standards on Motions to Dismiss and for Summary Judgment

##### 7 1. Motion to Dismiss

8 A defendant may move to dismiss a claim that "fail[s] to state a claim upon which relief  
9 can be granted." Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, a complaint "must  
10 contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its  
11 face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550  
12 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that  
13 allows the court to draw the reasonable inference that the defendant is liable for the misconduct  
14 alleged." *Iqbal*, 556 U.S. at 678. This standard is a "context specific task that requires the  
15 reviewing court to draw on its judicial experience and common sense," *Iqbal*, 556 U.S. at 679,  
16 and to "draw all reasonable inferences in favor of the nonmoving party." *Boquist v. Courtney*, 32  
17 F.4th 764, 773 (9th Cir. 2022) (citations omitted). At Defendants' request, for purposes of  
18 deciding this motion, the Court takes judicial notice of the government websites referenced in the  
19 parties' briefing.

##### 20 2. Motion for Summary Judgment

21 Summary judgment is appropriate when the moving party has shown "that there is no  
22 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

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1 Fed. R. Civ. P. 56(a). The moving party bears the initial “burden of proving the absence of a  
 2 genuine issue of material fact.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010)  
 3 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the moving party meets its burden,  
 4 the burden then shifts to the non-moving party to “designate specific facts showing a genuine  
 5 issue for trial.” *Celotex Corp.*, 477 U.S. at 324 (quotation marks omitted). In deciding a summary  
 6 judgment motion, the Court must view the evidence in the light most favorable to the nonmoving  
 7 party and draw all justifiable inferences in its favor. *Messick v. Novartis Pharm. Corp.*, 747 F.3d  
 8 1193, 1199 (9<sup>th</sup> Cir. 2014) (citing *Scott v. Harris*, 550 U.S. 372, 378 (2007)).

9 **B. Whether Plaintiffs State a Claim Under APA and/or Mandamus Act**

10 As noted above, Plaintiffs bring claims under the APA and the Mandamus Act. Because  
 11 “mandamus relief and relief under the APA are ‘in essence’ the same, when a complaint seeks  
 12 relief under the Mandamus Act and the APA and there is an adequate remedy under the APA, we  
 13 may elect to analyze the APA claim only.” *Vaz v. Neal*, 33 F.4th 1131, 1135 (9th Cir. 2022)  
 14 (quoting *R.T. Vanderbilt Co. v. Babbitt*, 113 F.3d 1061, 1065 (9th Cir. 1997)); *see also* *Indep.*  
 15 *Mining Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997) (The Supreme Court “has construed a  
 16 claim seeking mandamus under the [Mandamus Act] ‘in essence,’ as one for relief under § 706 of  
 17 the APA.”) (quoting *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 n.4 (1986)).

18 Under Section 706(1) of the APA, a court has authority to compel an “unreasonably  
 19 delayed” agency action, but “only if there is a specific, unequivocal command placed on the  
 20 agency to take a discrete agency action, and the agency has failed to take that action.” *Vietnam*  
 21 *Veterans of Am. v. Cent. Intel. Agency*, 811 F.3d 1068, 1075 (9th Cir. 2016) (internal marks and  
 22 citation omitted); *see Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (“[A] claim under  
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1   § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency  
 2   action that it is *required to take*.”). Thus, a court may compel agency action under the APA when  
 3   the agency (1) has “a clear, certain, and mandatory duty,” and (2) has unreasonably delayed in  
 4   performing such duty. *Plaskett v. Wormuth*, 18 F.4th 1072, 1082 (9th Cir. 2021); *see* 5 U.S.C. §  
 5   706(1). The Court addresses each issue in turn.

6           **1. Whether Defendants Have a “Clear, Certain, and Mandatory Duty” to  
 7           Adjudicate Mr. Khosravi’s Visa Application**

8           **a. Plaintiffs Have Identified Statutory and Regulatory Sources of a Mandatory  
 9           Duty**

10          The court finds that Plaintiffs have sufficiently alleged that Defendants have a “clear,  
 11        certain, and mandatory duty” to act, rooted in two distinct statutory sources. First, Section 555(b)  
 12        of the APA provides, in relevant part, that “[w]ith due regard for the convenience and necessity of  
 13        the parties or their representatives and within a reasonable time, each agency shall proceed to  
 14        conclude a matter presented to it.” 5 U.S.C. § 555(b); *see* Am. Compl., ¶¶ 37, 92. Second, the  
 15        Immigration and Nationality Act (“INA”) provides “[a]ll immigrant visa applications shall be  
 16        reviewed and adjudicated by a consular officer.” 8 U.S.C.A. § 1202. Implementing regulations  
 17        further provide, “[w]hen a visa application has been properly completed and executed before a  
 18        consular officer . . . the consular officer must issue the visa (or) refuse the visa.” 22 C.F.R. §  
 19        42.81(a). As the Ninth Circuit has observed, under these provisions, “[a] consular office is  
 20        required by law to act on visa applications.” *Patel v. Reno*, 134 F.3d 929, 932 (9th Cir. 1997). The  
 21        law imposes a non-discretionary duty to “review and adjudicate” such applications. *Id.*

22          Defendants do not directly dispute that these statutes and implementing regulations  
 23        impose on them a “clear, certain, and mandatory duty” to act, arguing only that they have fulfilled  
 24        ORDER GRANTING DEF.’S MOTION TO DISMISS AND  
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1 any such duty, as discussed further below. Myriad district courts (including many within the  
 2 Ninth Circuit) have concluded “that both the APA and State Department regulations create a clear  
 3 duty to adjudicate visa applications within a reasonable time.” *Rashidian v. Garland*, No. 23-CV-  
 4 1187, 2024 WL 1076810, at \*5 (D.D.C. Mar. 8, 2024); *see also R2 Technologies Corp. v. Rubio*,  
 5 2025 WL 436306, at \*4 (D.D.C. Feb. 7, 2025) (agreeing with “the majority view” that “[i]ssuing  
 6 a final decision on a visa application is plainly a discrete agency action … required by both the  
 7 APA and federal regulations”); *Sheikhalizadehjahed v. Gaudiosi*, No. 2:24-cv-1136 SCR, 2024  
 8 WL 4505648, at \*7 (E.D. Cal. Oct. 15, 2024) (“Absent binding precedent, the Court is persuaded  
 9 that § 1202(b) imposes a non-discretionary duty to review and adjudicate visa applications.”).  
 10 This court concludes that issuing a final decision on a visa application is a “clear, certain, and  
 11 mandatory duty” required by the APA and INA and implementing federal regulations.<sup>4</sup>

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 14 <sup>4</sup> The Court acknowledges that other courts have come to a different conclusion. Two such cases in this Western  
 15 District relied on *Karimova v. Blinken*, 2024 WL 3517852 (D.C. Cir. July 24, 2024), an unpublished decision from  
 16 the Circuit Court for the District of Columbia, which held under circumstances similar to those here that there is no  
 17 mandatory duty to “re-adjudicate” a visa application after a Section 1201(g) refusal. *See Beygi v. U.S. Dep’t of State*,  
 18 No. 24-cv-504-TSZ, 2024 WL 4871377, at \*2-3 (W.D. Wash. Nov. 22, 2024); *Hosseinejad v. Blinken*, No. 24-cv-  
 19 794-TSZ, 2024 WL 4858444, at \*2 (W.D. Wash. Nov. 21, 2024). Several other courts within the Ninth Circuit,  
 20 however, have expressly rejected *Karimova*’s reasoning. *See, e.g., Daneshvar v. Blinken*, No. 8:24-CV-00838-FWS-  
 21 DFM, 2024 WL 5410448, at \*5 (C.D. Cal. Nov. 21, 2024) (*Karimova* “is not binding, and the court finds it lacks  
 22 precedential or persuasive value to the case at bar.”); *Maadarani v. Mayorkas*, 2024 WL 4674703, at \*8 (E.D. Cal.  
 23 Oct. 31, 2024) (“The Court is not persuaded by Defendants’ reliance on *Karimova*’s holding regarding § 555(b).  
 24 *Karimova* primarily relied on the Foreign Affairs Manual (FAM) to determine that an initial visa refusal constitutes  
 25 a final decision” but “the FAM “lack[s] the force of law” in the Ninth Circuit.”) (citations omitted).

Indeed, several decisions issued by the District Court of the District of Columbia have expressly declined to follow *Karimova*. *See, e.g., Hajizadeh v. Blinken*, No. CV 23-1766, 2024 WL 3638336, at \*3 (D.D.C. Aug. 2, 2024) (“*Karimova* is an unpublished opinion, and ‘a panel’s decision to issue an unpublished disposition means that the panel sees no precedential value in that disposition.’ D.C. Cir. R. 36(e)(2). This court has considered *Karimova* but declines to follow it.”). Under *Patel*, and for the reasons articulated above, this Court concludes that the APA and INA impose on Defendants here a clear, mandatory duty.

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**b. Defendants Have Not Fulfilled Their Mandatory Duty**

Finding that Defendants have a mandatory duty to adjudicate Khosravi's visa application does not end the inquiry. Defendants argue that assuming a duty exists, they have fulfilled that duty by reviewing Khosravi's application and issuing a "refusal." Whatever action on the application they may take from that point on, Defendants argue, is merely discretionary and therefore, not reviewable under the APA.

The Court disagrees, and finds that Plaintiffs have adequately alleged that Defendants have not, to date, fulfilled the mandatory duty outlined above. While nominally “refused,” Khosravi’s application is, by most other indications, still in the adjudicative process. First, the notice Khosravi received from the embassy does not comply with the regulations governing a visa application refusal. Specifically, it does not appear to have been “signed and dated by the consular officer,” as required under 22 C.F.R. § 42.81(b), and it did not inform Khosravi, as further required, “of any statutory provision of law or implementing regulation under which administrative relief is available.” Am. Compl., Ex. D; *see Patel*, 134 F.3d at 932 (failure to comply with “refusal procedure” prescribed in 22 C.F.R. § 42.81(b) indicated consular officer’s action was not a refusal as required by law).<sup>5</sup> In addition, the message Khosravi received clearly (and repeatedly) indicated that the application—while purportedly “refused”—was in fact still in

<sup>5</sup> *Patel*, the Ninth Circuit authority most relevant to the issues before the Court, was a mandamus action challenging a consulate's unreasonable delay in processing plaintiff's visa application, the issue that is essentially raised in this case. *Patel* is not entirely on point with the facts here, however. In *Patel*, the defendant conceded that after plaintiff submitted her application, it was put "in abeyance," pending resolution of issues related to the plaintiff's eligibility. 134 F.3d at 932. The application at issue in *Patel* was not, as here, refused and then placed in "administrative processing," which Defendants here argue constitutes a final adjudication. Thus, while *Patel* squarely held that a "consular office is required by law to act on visa applications," it does not resolve the question of whether or not the office has in this case met that requirement.

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1 process. *See* Am. Compl., Ex. D (stating “[w]e will contact you by e-mail when your processing  
2 is completed” and requesting additional information “[b]efore we can continue processing your  
3 visa application”). Further supporting the conclusion that the application has not actually been  
4 adjudicated, as noted above, the CEAC “Visa Status Check” website clearly states that Khosravi’s  
5 visa application is currently “undergoing [administrative] processing” and that Khosravi “will  
6 receive another adjudication once such processing is complete.”

7 <https://ceac.state.gov/CEACStatTracker/Status.aspx> (last visited 3/3/2025).

8 As one district court in this circuit recently stated, “[r]ather than simply accepting the label  
9 of “Refused,” courts should consider “what is actually happening” in a specific case to determine  
10 whether an agency has discharged its duty. *Momeni v. Blinken*, No. 2:24-CV-04879-ODW  
11 (AGRX), 2024 WL 5112234, at \*4 (C.D. Cal. Dec. 13, 2024) (joining “the prevailing position  
12 among California district courts in holding that a soft refusal for administrative processing is not a  
13 final decision, and therefore does not discharge an agency’s mandatory non-discretionary  
14 obligation to adjudicate a visa application.”); *see also Mahonak v. Rubio*, No. 8:24-CV-01443-  
15 FWS-DFM, 2025 WL 449044, at \*14 (C.D. Cal. Feb. 10, 2025) (“[T]he initial refusal of  
16 Plaintiffs’ visa applications pending ‘administrative processing’ did not discharge [defendant’s]  
17 duty because there was no final adjudication.”); *Hassan v. Dillard*, 2024 WL 4979476, at \*5 (D.  
18 Minn. Dec. 4, 2024) (“Simply describing the decision as final does not make it so.”); *Aminzadeh  
19 v. Blinken*, 2024 WL 3811153, at \*4 (C.D. Cal. Aug. 9, 2024) (“The mere fact that the  
20 Department has chosen to characterize this action as a “refusal” does not necessarily make it a  
21 final decision; ‘the focus should be on what is actually happening[.]’”) (citing *Vulupala v. Barr*,  
22 438 F. Supp. 3d 93, 98 (D.D.C. 2020)). This conclusion is consistent with Ninth Circuit authority

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1 holding that “[a] consular office is required by law to act on visa applications,” and for a refusal  
 2 to comply with these requirements it must be a “final decision.” *Patel*, 134 F.3d at 932 (citing 8  
 3 U.S.C. § 1201(g) (INA § 221(g)).

4 Again, the Court acknowledges that courts have come to opposing conclusions on this  
 5 issue. *See supra*, n. 4 and cases cited therein. However, the “majority view”—and the more  
 6 persuasive one—is that the initial refusal of a visa application pending “administrative  
 7 processing” does not discharge the consular duty to adjudicate a visa application. *See R2*  
 8 *Technologies Corp.*, 2025 WL 436306, at \*4 (D.D.C. Feb. 7, 2025) (agreeing with “the majority  
 9 view” that a provisional refusal pending administrative processing is not a final decision); *Alam v.*  
 10 *Blinken*, 2024 WL 4804557, at \*5 (E.D. Cal. Nov. 15, 2024) (“[The prevailing position among  
 11 district courts is that a refusal for administrative processing is not a final decision and therefore  
 12 does not discharge the agency’s obligation to adjudicate visa applications.”); *Sheikhhalizadehjahed*  
 13 *v. Gaudiosi*, 2024 WL 4505648, at \*7 (E.D. Cal. Oct. 16, 2024) (“Absent binding precedent, the  
 14 Court is persuaded that § 1202(b) imposes a non-discretionary duty to review and adjudicate visa  
 15 applications. The initial refusal of Plaintiff’s father’s visa application while placing it in  
 16 “administrative processing” does not dispense with this duty because there has been no final  
 17 adjudication. Any other conclusion about § 1202(b) and circumstances like these would allow  
 18 DOS to evade any judicial review of delayed adjudications by issuing pro forma refusals while  
 19 continuing to administratively process cases. The Court is unwilling to adopt statutory  
 20 interpretations which would produce absurd results.”) (citation omitted). For the reasons stated  
 21 above, the Court concludes that Plaintiffs have sufficiently established that Defendants have not  
 22 met their mandatory duty to adjudicate Khosravi’s visa application.

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## 2. Whether the 16-Month (and Counting) Delay Is Unreasonable

Having determined that Defendants have a non-discretionary, mandatory duty to adjudicate Khosravi’s application, and that they have not fulfilled that duty, the Court next turns to the question on the merits: to wit, whether the delay—to date, 16 months and counting—is unreasonable.<sup>6</sup> Defendants argue that Plaintiffs’ allegations fail to support their claim of unreasonableness and must be dismissed; Plaintiffs seek a ruling that the delay has been unreasonable and that they are, as a matter of law, entitled to an order compelling Defendants to adjudicate the application.

As noted above, the APA requires an administrative agency to adjudicate “a matter presented to it” “within a reasonable time.” 5 U.S.C. § 555(b). When determining whether an agency’s delay is unreasonable, courts in the Ninth Circuit consider six factors, articulated in *Telecommunications Research and Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) (“*TRAC*”); see *In re Pesticide Action Network N. Am.*, 798 F.3d 809, 813 (9th Cir. 2015). These considerations include:

- (1) the time agencies take to make decisions must be governed by a rule of reason;
- (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
- (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;

<sup>6</sup> Plaintiffs urge this Court to consider that they began the process of obtaining visas nearly four years ago, but “[c]ourts measure the period of delay from the last government action to the issuance of the opinion.” *Nusrat v. Blinken*, 2022 WL 4103860, at \*6 (D.D.C. Sept. 8, 2022). By this measurement, the length of time in this case has been, so far, approximately 16 months.

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1 (4) the court should consider the effect of expediting delayed action on agency  
 2 activities of a higher or competing priority;

3 (5) the court should also take into account the nature and extent of the interests  
 4 prejudiced by delay; and

5 (6) the court need not find any impropriety lurking behind agency lassitude in order  
 6 to hold that agency action is unreasonably delayed. *Id.* (quoting *TRAC*, 750 F.2d  
 7 at 80) (citations and quotations omitted).

8 Under this review, the Court concludes that Plaintiffs have failed to demonstrate that the  
 9 delay in this case has been unreasonable. The first factor—“whether the time for agency action  
 10 has been reasonable”—is considered the most important. *See Vaz v. Neal*, 33 F.4th 1131, 1138  
 11 (9th Cir. 2022) (citations omitted).<sup>7</sup> “In the immigration context, numerous district courts within  
 12 the Ninth Circuit have found that lengthier delays” than the one at issue here “were not  
 13 unreasonable.” *Kapoor v. Blinken*, 2022 WL 181217, at \*4 (N.D. Cal. Jan. 20, 2022) (noting that,  
 14  
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16 <sup>7</sup> While under some circumstances the second factor may provide useful context in evaluating the first, it does not do  
 17 so in this case; as numerous courts have recognized, Congress has not prescribed a timetable for processing  
 18 immigrant visa adjudications, and instead “has given the agencies wide discretion in the area of immigration  
 19 processing.” *Skalka v. Kelly*, 246 F. Supp. 3d 147, 153-54 (D.D.C. 2017). “Absent a congressionally supplied  
 20 yardstick, courts typically turn to case law as a guide.” *Arab v. Blinken*, 600 F. Supp. 3d 59, 70 (D.D.C. 2022)  
 21 (citations and internal quotation marks omitted).

22 Plaintiffs contend that Congress supplied a timetable in 8 U.S.C. § 1571, which states that “[i]t is the sense of  
 23 Congress that the processing of an immigration benefit application should be completed not later than 180 days after  
 24 the initial filing of the application.” 8 U.S.C. § 1571(b). The Court rejects Plaintiffs’ attempt to rely on this  
 25 provision. As a sister court recently observed, “this argument is unavailing both because the Ninth Circuit has  
 1 interpreted similar statutory ‘sense of Congress’ language to be non-binding legislative dicta, and because Plaintiffs  
 2 have failed to identify any authority suggesting this provision applies to the State Department’s processing of visa  
 3 applications, as opposed to USCIS’s processing of immigrant benefit applications.” *Mahonak*, 2025 WL 449044, at  
 4 \*16 (cleaned up, citing *Mohsenzadeh v. Kelly*, 276 F. Supp. 3d 1007, 1014 (S.D. Cal. 2017); *Yang v. Cal. Dep’t of  
 5 Soc. Serv.*, 183 F.3d 953, 961 (9th Cir. 1999); *Arab*, 600 F. Supp. 3d at 69-70.)

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1 *Arab*, 600 F. Supp. 3d at 70 (summarizing cases finding immigration delays of five to seven years  
 2 are unreasonable and those between three and five years are often not). More specifically, and  
 3 critically for purposes of Defendants' motion, numerous courts have found comparable  
 4 allegations of delay to be insufficient to state a claim at the motion-to-dismiss stage. *See, e.g.*,  
 5 *Infracost Inc. v. Blinken*, 732 F. Supp. 3d 1240, 1254 (S.D. Cal. 2024) ("This fourteen-month  
 6 administrative-processing-related delay is comparable to those considered insufficient to state a  
 7 plausible claim for relief in analogous cases."); *Barazandeh v. U.S. Dep't of State*, 2024 WL  
 8 341166, at \*8 (D.D.C. Jan. 30, 2024) (noting "district courts have generally found that  
 9 immigration delays of two to three years are reasonable" and finding twenty-month delay due to  
 10 administrative processing reasonable); *Isse v. Whitman*, 2023 WL 4174357, at \*6 (D.D.C. June  
 11 26, 2023) (dismissing under Federal Rule 12(b)(6) visa applicant's claim based on 40-month  
 12 delay due to administrative processing); *Nusrat*, 2022 WL 4103860, at \*6 (finding 32-month  
 13 delay due to administrative processing reasonable and dismissing claim). The first *TRAC* factor  
 14 weighs heavily in favor of Defendants.

15 "The third and fifth factors require the [c]ourt to assess whether human health and welfare  
 16 are at stake and whether the nature and extent of those interests are prejudiced by the delay."  
 17 *Ghalambor v. Blinken*, 2024 WL 653377, at \*6 (C.D. Cal. Feb. 1, 2024). Courts typically  
 18 consider these factors together. *See, e.g.*, *Najafi v. Pompeo*, 2019 WL 6612222, at \*7 (N.D. Cal.  
 19 Dec. 5, 2019); *Islam v. Heinauer*, 32 F. Supp. 3d 1063, 1073 (N.D. Cal. 2014). The Court has  
 20 reviewed Plaintiffs' allegations and acknowledges the hardship that Plaintiffs and their family are  
 21 experiencing due to the delay in processing Khosravi's visa. *See, e.g.*, Am. Compl., ¶ 79  
 22 (Plaintiffs "are suffering from extreme emotional and psychological harm due to the uncertainty  
 23 ORDER GRANTING DEF'S. MOTION TO DISMISS AND  
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1 of their family’s future.”). But hardships such as those that Plaintiffs describe in general and  
 2 conclusory terms—while far from trivial—are nearly always presented by delays in processing  
 3 immediate-family visa applications. This factor weighs in Plaintiffs’ favor, though not enough to  
 4 tip the balance in relation to the other *TRAC* factors.

5 Finally, the fourth *TRAC* factor heavily favors Defendants.<sup>8</sup> Under this factor, the court  
 6 considers “whether compelling the agency to act would detract from its higher or competing  
 7 priorities.” *Vaz*, 33 F.4th at 1138. Courts have “refused to grant relief, even though all the other  
 8 factors considered in *TRAC* favored it, where a judicial order putting the petitioner at the head of  
 9 the queue would simply move all others back one space and produce no net gain.” *Mashpee*  
 10 *Wampanoag Tribal Council*, 336 F.3d at 1102 (cleaned up). In this case, an order requiring  
 11 Defendants to adjudicate Khosravi’s application would both prioritize him at the expense of  
 12 similarly situated applicants, and interfere with Defendants’ “discretion in prioritizing its  
 13 activities and allocating its resources.” *Vaz*, 33 F.4th at 1138 (citation omitted). Plaintiffs argue  
 14 that there is no evidence that there is a “queue,” or that applications are necessarily processed in  
 15 the order they are received. Nevertheless, “granting the relief Plaintiff[s] seek[ ] would [still] push  
 16 others, some of whom may not have the resources to commence litigation, further back in the  
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18       <sup>8</sup> The sixth factor is “not really a ‘factor,’ but merely a confirmation that agency delay need not be intentional to be  
 19 unreasonable.” *Feng v. Beers*, 2014 WL 1028371, at \*5 (E.D. Cal. Mar. 14, 2014). Plaintiffs argue, without  
 20 evidence, that this factor favors them because Defendants have made no attempt to hire more staff to process  
 21 applications more expeditiously. There is no evidence (or allegation) that Defendants have the ability to hire more  
 22 staff, that more staff would result in the faster processing of applications generally, or that faster processing of  
 23 applications would have any effect on the adjudication of Khosravi’s application specifically. The sixth factor favors  
 24 neither side. *R. v. U.S. Citizenship & Immigr. Servs.*, 2023 WL 9197564, at \*5 (C.D. Cal. Dec. 6, 2023) (citation  
 25 omitted) (“In absence of any allegations of impropriety, the sixth TRAC factor typically is either neutral or weighs  
 in the government’s favor.”).

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1 process.” *Aghchay v. U.S. Dep’t of State*, 2022 WL 19569516, at \*3 (C.D. Cal. Dec. 20, 2022).  
2 Furthermore, where, as here, “[t]he agency is in a unique—and authoritative—position to view its  
3 projects as a whole, estimate the prospects for each, and allocate its resources in the optimal  
4 way,” there is “no basis for reordering agency priorities.” *In re Barr Lab’ys*, 930 F.2d at 76; *see*  
5 *also Arab*, 600 F. Supp. 3d at 71 (“[D]eference must be given to the State Department’s priority-  
6 setting and resource-allocation decisions.”) (collecting cases).

7 Under the foregoing *TRAC* analysis, the Court concludes that Plaintiffs have failed to  
8 allege that the delay they have experienced in this case is unreasonable. The Court again  
9 acknowledges that other courts have come to a different conclusion, finding that questions of  
10 unreasonable delay may be fact-intensive and therefore, not appropriate for disposition at the  
11 motion-to-dismiss stage. *See, e.g., Barrios Garcia v. U.S. Dep’t of Homeland Sec.*, 25 F.4th 430,  
12 451 (6th Cir. 2022) (“Resolution of a claim of unreasonable delay is ordinarily a complicated and  
13 nuanced task requiring consideration of the particular facts and circumstances before the court.”).  
14 In this case, however, Plaintiffs have not argued that discovery is necessary to further develop a  
15 record that might support their claim of unreasonableness. Instead, they have moved the Court to  
16 find on the sparse record before it that, as a matter of law, the 16-month delay at issue is  
17 unreasonable. The Court declines to do so and finds that, to the contrary, the *TRAC* factors weigh  
18 heavily in favor of finding that the length of delay, to date, is not unreasonable.

19 This dismissal is without leave to amend, which Plaintiffs have neither requested nor  
20 demonstrated they are entitled to; but it is without prejudice. Should later circumstances develop  
21 that support a finding of unreasonable delay, the Court is prepared to direct Defendants to  
22 adjudicate Khosravi’s application, especially considering his advanced age. *See, e.g. Infracost*  
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1 *Inc. v. Blinken*, 732 F. Supp. 3d 1240, 1258 (S.D. Cal. 2024) (dismissing unreasonable delay  
2 claims “WITHOUT LEAVE TO AMEND,” but “WITHOUT PREJUDICE to refiling should later  
3 circumstances demonstrate an unreasonable delay”); *Aminzadeh*, 2024 WL 3811153, at \*9  
4 (same); *Shahijani v. Laitinen*, 2023 WL 6889774, at \*6 (C.D. Cal. Oct. 6, 2023) (same).

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court GRANTS Defendants’ Motion to Dismiss and  
7 DENIES Plaintiffs’ Motion for Summary Judgment. This matter is DISMISSED without leave to  
8 amend but without prejudice, as outlined above.

9 DATED this 14th day of March, 2025.

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Barbara Jacobs Rothstein  
U.S. District Court Judge

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24 DENYING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT